IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 898 of 1990
With
FIRST APPEAL No. 899 of 1990
To
FIRST APPEAL No. 900 of 1990
With
CROSS OBJECTION No. 254 of 1998
In
FIRST APPEAL No. 898 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE NEW INDIA ASSURANCE CO.LTD - Appellant(s)
Versus
ABDUL SATTAR ALIBHAI & 2 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR GAURANG H BHATT for Respondent: 1 in F.A. 898 and 899/90
None for Defendant(s) : 2,
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/08/2007

COMMON ORAL JUDGMENT

1. Shri Rajni H. Mehta, learned counsel appears for the appellants in First Appeals No. 898, 899 and 900 of 1990; Shri Gaurang H. Bhatt, learned counsel submits that he is appearing for the respondent no.1 in First Appeals No. 898 and 899 of 1990. He submits that he does not appear for respondent no.1 in First Appeal No. 900 of 1990.
2. None appears for the other respondents despite service.
3. The appellant-Insurance Company, being aggrieved by the common award dated 15th March, 1990, passed by the learned Claims Tribunal [Main], Junagadh, in M.A.C. Petitions No. 479/84, 35/85 and 492/84, is before this Court with a submission that in view of the facts available on the records, the Insurance Company could not be held liable. Shri Bhatt, learned counsel for the respondent no.1 submits that in view of the death of Ramjibhai Kurjibhai – party defendant in M.A.C. Petitions No. 479 of 1984 and 492 of 1984, the appeals be declared to have abated. Shri Mehta, learned

counsel for the appellant Insurance Company in each of the case submits that Ramjibhai Kurjibhai was party defendant/non-claimant in two claim petitions; that the original owner Gaffar Ibrahim Garana had transferred the vehicle in favour of Ramjibhai Kurjibhai and as such, Ramjibhai Kurjibhai was liable to the claim submitted by the claimants. He submits that in para-21 of the judgment, the Tribunal has clearly recorded a categorical finding that Gafar Ibrahim did not transfer the vehicle to Ramji Kurji before the date of the accident. He submits that as the said finding is not under challenge and the said defendant, even if continues as party-respondent or is deleted from the array of the respondents, it is not going to make any difference. He however submits that as the Insurance Company is not challenging the finding recorded by the learned Claims Tribunal in para-21 of the judgment, name of Ramjibhai Kurjibhai in First Appeals No. 899 and 900 of 1990 be ordered to be deleted. Prayer is accepted. Let name of Ramjibhai Kurjibhai be deleted from the array of

the respondents of First Appeals No. 899 and 900 of 1990. Office to make necessary amendment within one week.

4. Shri Mehta, learned counsel for the appellant Insurance Company, placing reliance upon the judgment of the Supreme Court in the matter of New India Assurance Company v. Vedwati [AIR 2007 SC 1334] submits that if passengers are traveling in a goods vehicle, then, Insurance Company cannot be held liable. Shri Bhatt, learned counsel for the claimants, however, submitted that in absence of production of the policy by the Insurance Company, such argument is not available to the appellant. In the present matter, it is not in dispute before me that the injured claimants, were traveling in a goods vehicle along with their goods after paying freight for the goods. Once this position is not disputed, then, burden to prove that the risk of the passengers even in the goods vehicle was covered by the Insurance Company on some additional premium, was upon the owner and not on the Insurance Company. When Section 95 of the

Motor Vehicles Act provides that it would not be necessary for the Insurance Company to cover the risk of a passenger who might be traveling in a goods vehicle, then, statutory presumption would be in favour of the Insurance Company.

5. In view of the judgment of the Supreme Court in the matter of New India Assurance Company v. Vedwati [supra], I hold that the Insurance Company would not be answerable to the claim made by the claimants.

6. The Insurance Company has already deposited the amount with the Claims Tribunal. If such amount is not fully disbursed, then, the balance would be given back to the Insurance Company and in case, it is partly given or fully given, then too, to the extent of payment of the compensation amount to the claimants, the Insurance Company would be entitled to recover the said amount from the driver and owner of the offending vehicle with interest at 6% per annum from the date of the deposit till the date of realization. All the three appeals filed by the Insurance Company stand allowed. No costs.

7. As the appeals filed by the Insurance Company stand allowed, Cross-Objections at the instance of one of the claimants-Abdul Sattar Alibhai cannot be entertained, those are accordingly dismissed.

[R.S. GARG, J.]

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